



U.S. Department of Justice

United States Attorney
Southern District of New York

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August 7, 2023

BY ECF

Hon. John G. Koeltl
United States District Judge
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: *Kunstler et al. v. Central Intelligence Agency et al.*, No. 22 Civ. 6913 (JGK)

Dear Judge Koeltl:

I write respectfully on behalf of defendants the Central Intelligence Agency (“CIA”) and Michael R. Pompeo, the former Director of the CIA (together, the “Federal Defendants”), to provide the Court with notice of a recent decision from the U.S. Court of Appeals for the Ninth Circuit, which further supports the Federal Defendants’ argument that Plaintiffs lack standing to pursue their claims against the CIA in this case. *See* ECF No. 35 at 6-11; ECF No. 42 at 1-3. The Ninth Circuit recently affirmed a district court decision, discussed in the parties’ briefs on the Federal Defendants’ motion to dismiss, which held that the government’s “retention of . . . allegedly illegally obtained records . . . , without more, does not give rise to a concrete injury necessary for standing.” *Phillips v. U.S. Customs & Border Prot.*, __ F.4th __, 2023 WL 4673472, at *1 (9th Cir. July 21, 2023), *aff’g* No. 2:19-CV-06338(SVW)(JEM), 2021 WL 2587961, at *8 (C.D. Cal. June 22, 2021). In order to have standing to seek injunctive relief, the court concluded that a plaintiff must “continue[] to suffer adverse effects,” expect to suffer “a possible future injury, that [is] certainly impending,” or “there must be a substantial risk that the harm will occur.” *Id.* at *4 (internal quotation marks omitted). The Ninth Circuit also noted that its previous decision in *Fazaga v. FBI*, 965 F.3d 1015 (9th Cir. 2020), *rev’d on other grounds*, 142 S. Ct. 1051 (2022), which had held that expungement may be available to redress certain constitutional injuries, did not address when a plaintiff has standing to seek such relief. *See Phillips*, 2023 WL 4673472, at *6.

I thank the Court for its consideration of this additional precedent.

Respectfully,

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